



Battle Creek Zoning Board of Appeals

Staff Report

Meeting: January 10, 2012
Appeal #Z-02-12

To: Zoning Board of Appeals
From: Glenn Perian, Senior Planner
DATE: January 3, 2012
Subject: Petition for a dimensional variance (Z-02-12) to allow flag lots by waiving the requirement for lots to have frontage on a public street and to access said lots by an easement, license, corridor, alley, or private road less than 66' in width off or from a public street on property located at 3502 Capital Ave. SW (0085-00-750-0, 0085-00-715-0).

Summary

This report addresses a petition from Wayne White and Robert Cole, seeking approval of a Dimensional Variance (Z-02-12), to allow additional lot splits for construction on flag lots on property at 3502 Capital Ave. SW, 0085-00-750-0, and 0085-00-715-0.

Background/Project Information

The subject site is located at just off of Capital Ave. SW, south of Beckley Rd. The subject site is zoned O-1 "Office District" and is approximately nine acres in size total. The properties are used primarily for office functions and are accessed by a 20' wide easement that is paved and landscaped. The request is to allow further land division splits and to develop the properties in the rear of the site (further west of Capital Ave SW) and use the existing 20' wide access easement/driveway, in conflict with Chapter 1282.03 of the Zoning Ordinance which prohibits flag lots.

Public Hearing and Notice Requirements

An advertisement of this public hearing was published in the Battle Creek SHOPPER NEWS on Thursday, December 22, 2011, not less than the 15 days before the hearing as required by State Law and ordinance.

Notices of the public hearing were also sent by regular mail on December 20, 2011, to 24 property owners and occupants located within 300 feet of the subject parcel. Planning staff has received no comments relative to this request.



Aerial Photograph of the Subject Site

Surrounding Land Uses

The subject property is located south of Beckley Rd. off Capital Ave. SW. There is a mix of office and multi-family residential uses along Capital SW and large single family residential and vacant parcels to the west.

Applicable Zoning Ordinance Provisions

Chapter 1234.04(a) C. Permit the reconstruction of a nonconforming building which has been damaged by explosion, fire, act of God or the public enemy, to the extent of more than fifty percent of its insurable value, where the Board finds some compelling necessity requiring a continuance of the nonconforming use, and the primary purpose of continuing the nonconforming use is not to continue a monopoly; and

- (b) The Board shall have the authority to grant the following variations:
 - (1) **Nonuse.** If there are practical difficulties for nonuse variances relating to the construction, structural changes, or alterations of buildings or structures related to dimensional requirements of the zoning ordinance or to any other nonuse-related standard in the ordinance in the way of carrying out the strict letter of the zoning ordinance, then the Board may grant a variance so that the spirit of the zoning ordinance is observed, public safety secured, and substantial justice is done. The Board may impose conditions as otherwise allowed under the Michigan Zoning Enabling Act, MCL 125.3101 et seq.; and [MCL 125.3604(7) and (8).]

Analysis

The Appellant is requesting a variance waiver from the flag lot restriction outlined in Chapter 1282.03 and defined in Chapter 1230.06 (38) that would authorize addition property splits and allow building to occur on property that does not have access to a public street (by definition). The Appellant has stated in the supporting material that the natural wooded setting, topography, wetlands and low water table make it virtually impossible to expand the existing 20' roadway easement to the required 66'. The Appellant has supplied additional reasons supporting the request for appeal along with photographs of the existing access easement. They are included with the application and part of this report. An aerial photo showing the shape of the lot, building locations, and existing contours of the lot has also been provided.

The Appellant would like the ability to make further lot divisions/building lots and use the existing access driveway coming off of Capital Ave. SW to gain access for the future development sites.

Is there something unique about this lot or property that makes relief necessary? We would agree that by definition any future lot spits would create additional flag lots as defined in Chapter 1230.06 of the Zoning Code. We would also agree with the Appellant that the slope of the land along with the lowland/wetlands would make expansion of the access easement extremely difficult. The Appellant has very limited options other than what is proposed to develop the back portions of the property. Furthermore, the existing driveway appears very adequate to handle the existing traffic that the property currently generates in addition to any potential traffic that the proposed lot splits would create. Additionally, the City of Battle Creek Fire Inspector has visited the site and has supplied a letter dated December 15, 2011 supporting the variance request.

Findings and Recommendation

The Zoning Board of Appeals can approve, approve with conditions, or deny this request. The Zoning Board of Appeals can also table or postpone the request pending additional information. In consideration of all variations from the Zoning Code, the Board shall, before making any such exceptions or variations, in a specific case, first determine that the conditions listed below are satisfied. Planning staff has reviewed these conditions and we believe that each condition can be justified in an affirmative manner. We have provided a rationale for each condition set forth below for Dimensional Variances. Therefore, the Planning staff recommends that the Zoning Board of Appeals approve the Dimensional Variance (Z-02-12) based on the following findings contained in this staff report.

- A) Staff finds that practical difficulty does in fact exist if the strict requirement of the Ordinance is applied to this specific request and that the Board is authorized to grant a variance in this case. We believe that the practical difficulty associated with the slope of the land and the existing wetlands presents substantially more than a mere inconvenience for future development in this case. Furthermore, the existing 20' access easement has been constructed to the satisfaction of the fire inspector and appears to be adequate to handle existing and future traffic flows that may be generated.
- B) Staff believes that the practical difficulty associated with the slope of the property and the wetlands are exceptional and peculiar to the subject parcel and does not generally exist throughout the City. The wetlands and slope of the land is not self created and the existing access drive has been constructed in light of these obstacles.
- C) Staff does not believe that if the variance is granted that the intent of the Ordinance will be altered or that the rights of others will be compromised.
- D) Staff believes that the variance requested is the minimum necessary to provide relief from the practical difficulty of the severe slope and wetlands of the subject property.

Attachments

The following information is attached and made part of this Staff Report.

1. ZBA Petition Form (Petition #Z-02-12)
2. Addendum from applicant supplying required and supplemental information
3. Survey sketch of subject property
4. Aerial of subject with 2' contours
5. 13 Photos of existing access drive
6. Letter dated 12/15/11 from the Fire Inspector supporting the request

Subject property with 2' contours

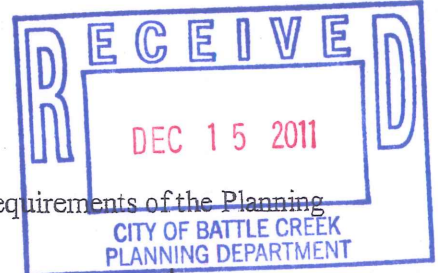


Date: 12-15-11

Appeal No. Z-02-12

APPLICATION FOR A VARIANCE
ZONING BOARD OF APPEALS

City of Battle Creek, Michigan



An Appeal to the Zoning Board of Appeals to authorize a variance from the requirements of the Planning and Zoning Code (Part Twelve) of the City of Battle Creek.

Name of Appellant: Wayne White and Robert A. Cole

Address: 3508 Capital Ave., S.W. Phone: (269) 979-3019

Name of Owner (if different from Appellant): _____

Address: _____ Phone: _____

TO THE ZONING BOARD OF APPEALS: Request is hereby made for permission to:
(Choose One) Extend Erect (Waive) Use Convert Enclose

Description:
Chapter 1282 "Lot Width Requirements." Chapter 1282.03 "Flag lots Prohibited" which requires access to lots be gained by easement, license, corridor, alley, or private drive of at least 66 ft in width.

Contrary to the requirements of Section(s) 1280.06 (364) of the Planning and Zoning Code, upon the premises known as 3502 Capital Ave. SW. + Parcel # Battle Creek, MI, in accordance with the plans and/or plat record attached. (0085-00-7150)

The proposed building or use requires Board action in the following area(s):

Approval of a variance for the reduction of a roadway width requirement of 66 ft in width to the width of the existing roadway as shown on Exhibit 1.

Property/Tax I.D. # No. 0085 - 00 - 750 - 0 Size of the Lot: Width _____ Depth _____
0085 - 00 - 715 - 0

Size of Proposed Building: Width _____ Depth _____ Height _____

The following reasons are presented in support of this appeal (complete each section):

- (a.) This property cannot be used in conformance with the ordinance without the requested variance because:

See Addendum section a.

- (b.) This problem is due to a unique situation not shared in common with nearby property owners because:

See Addendum section b.

- (c.) Granting the variance would not alter the essential character of the area because:

See Addendum section c.

- (d.) The problem is not self-created because:

See Addendum section d.

- (e.) **USE VARIANCES ONLY** It is not possible to use this particular property for any other use currently allowed in the zoning district because:

I hereby affirm that, to the best of my knowledge, all the above and accompanying statements and drawings are correct and true. In addition, I give permission to the City of Battle Creek's Planning Department staff to access my property, if necessary, to take photographs of the subject of this appeal.

Wayne White
(Print Appellant Name)

Robert A. Cole

Wayne White
(Signature of Appellant)

Robert A. Cole

3508 Capital Ave, S.W. Battle Creek, MI. 49015
(Address of Appellant)

If you require additional information or assistance in filling out this application, please contact the Planning Department at (269) 966-3320.

Addendum

Introduction:

This variance application is from 2 adjacent property owners. Mr. White purchased 11 acres in 1987 with frontage on Capital Avenue (Parcels A and B Exhibit 1). In 1992 Parcel B was split and sold for development prior to the adoption of the amendments to the flag lot ordinance in 1993. The property was reacquired by Mr. White and sold to Mr. Cole in 1997, at which time a building was constructed at the West end of Parcel B. (See Exhibit 1). The current drive was in existence up to Parcel B since 1987 and was extended to the building constructed in 1997 at the West end of Parcel B. In 2006 a new office build was constructed on the property adjacent to and North of Parcels A and B. As a result of the construction of this new building the 3 property owners entered into an easement agreement relating to the shared drive located on Parcel A. (See Exhibit 1). The benefits of this right away agreement extend to the vacant building sites on Parcel A and B. Granting this variance will not only resolve the practical difficulties, as outline in this Addendum, for the current property owners, but will resolve these difficulties for future additional owners who wish to develop the vacant building sites. Approving this variance application will provide consistency for use of the current shared driveway with future development.

The Fire Marshal for the City of Battle Creek has inspected the property and has submitted a letter to the Planning Department indicating that he has "no problem with the variance request."

- a. Parcels A and B cannot be used in conformance with the ordinance without a variance for the following reasons:

Parcel A. (See Exhibit 1)

1. Brickyard Creek and designated wetland runs along full length of the south border.
2. The DNR designated wetland on approx. 2.5 acres of my 4.66 total acreage, along the south border.
3. Two buildings front Capital Ave SW (3496 and 3502), and were in existence when the property was purchased in 1987. One or both of these buildings would have to be removed in order to create a 66 ft. wide right-of-way.
4. Large, well-established, indigenous trees line the existing easement road.
5. The property is not level, and there is a large hill/berm on the west ¼ to 1/3 of the property.
6. Numerous ornamental trees and grasses are scattered throughout the property.

7. There is a large boulder retaining wall in the middle of the property.

Parcel B. (See Exhibit 1)

1. The remaining undeveloped 4 acres of Parcel B is in a natural setting with woods on either side of the existing roadway. If the roadway was required to be expanded to 66' this would significantly affect the natural setting, the potential location of building sites and the ability to develop the property given the existing topography. (See Exhibit 1, 2 and Photos 1-2)
 2. For the first 100' on either side of the existing roadway expansion of the width of the roadway to 66' would be very impractical, if not impossible due to the existence of wetlands and the very shallow water table. (See Exhibits 1, 2 and Photos 1-2)
 3. Existing property line on the north boundary of Parcel B and a wetland and pond to the south of the existing roadway makes expansion of the width of the roadway to 66' impractical or near impossible. (See Exhibit 2 and Photos 1-2)
- b. The problems with ordinance compliance for Parcels A and B are due to the unique situation not shared in common with nearby property owners for the following reasons:

Parcel A. (See Exhibit 1)

1. Expansion of the existing roadway to the North is impractical due to the fact that the Northern property line of Parcel A runs along the Northern edge of, or under the existing roadway. In addition portions of this boundary run under a stone wall. The situation described in this paragraph are unique to Parcel A and are not shared by other property owners in the area or in the city. (See Exhibit 1 and Photo 13)
2. Expansion of the existing roadway to the South is impractical because two buildings front Capital Ave SW (3496 and 3502), and were in existence when the property was purchased in 1987. One or both of these buildings would have to be removed in order to create a 66 ft. wide right-of-way. The situation described in this paragraph is unique to Parcel A and is not shared by other property owners in the area or in the city. (See Exhibit 1 and Photo 8)
3. Large, well-established, indigenous trees line the existing easement road and would need to be removed in order to create a 66 ft. right of way. The situation described in this paragraph is unique to Parcel A and is not shared by other property owners in the area or in the city. (See Exhibit 1 and Photos 7, 9, 10, 11 & 12)

4. The property is not level, and there is a large hill/berm on the west ¼ to 1/3 of the property which would make it impractical to create a 66 ft. right of way. The topography of this area of Parcel A would require substantial removal of earth, destroy the vegetation and natural beauty and disrupt the underground utility supply. The situation described in this paragraph is unique to Parcel A and is not shared by other property owners in the area or in the city. (See Exhibit 1 and Photos 10 & 11)
5. There is a large boulder retaining wall in the middle of the property which was constructed prior to the adoption of the flag lot ordinance. Creation of a 66 ft. right of way would require removal of this bolder retaining wall, destroy the natural sitting of the area and require additional construction of walkways and parking for the existing buildings. The situation described in this paragraph is unique to Parcel A and is not shared by other property owners in the area or in the city. (See Exhibit 1 and Photo 13)
6. Granting this variance will not alter or conflict with the intent of this ordinance. The flag lot ordinance has a very specific intent-to apply to the construction of a "second tier" of homes. The planning department has taken the position in response to variance applications very similar to this one that the flag lot ordinance was not intended to affect office or commercial subdivisions and that the creation of new commercial lots and roadways such as the one requested in this petition have sufficient width to accommodate emergency services vehicles. The situation described in this paragraph is unique to Parcel A and is not shared by other property owners in the area or in the city. (See Exhibit 1 and Photos 1-13)

Parcel B (See Exhibit 1)

1. The remaining undeveloped 4 acres of Parcel B is in a natural setting with woods on either side of the existing roadway. If the roadway was required to be expanded to 66' this would significantly affect the natural setting, the potential location of building sites and the ability to develop the property given the existing topography. The situation described in this paragraph is unique to Parcel B and is not shared by other property owners in the area or in the city. (See Exhibit 1, 2 and Photos 1-2)
2. For the first 100' on either side of the existing roadway expansion of the width of the roadway to 66' would be very impractical, if not impossible due to the existence of wetlands and the very shallow water table. The situation described in this paragraph is unique to Parcel B and is not shared by other property owners in the area or in the city. (See Exhibits 1, 2 and Photos 1-2)
3. Existing property line on the north boundary of Parcel B and a wetland and pond to the south of the existing roadway makes expansion of the width of the roadway

to 66' impractical or near impossible. The situation described in this paragraph is unique to Parcel B and is not shared by other property owners in the area or in the city. (See Exhibits 1, 2 and Photos 1-2)

4. The topography of this area of Parcel B would require substantial removal of earth, destroy the vegetation and natural beauty and require the removal of a significant portion of a well established woodland area. The current location of the existing drive follows the natural slope of the land and is located in such a way as to create building sites that fit into the natural setting. The situation described in this paragraph is unique to Parcel A and is not shared by other property owners in the area or in the city. (See Exhibit 1, 2 and Photos 1, 2 & 6)
5. Granting this variance will not alter or conflict with the intent of this ordinance. The flag lot ordinance has a very specific intent-to apply to the construction of a "second tier" of homes. The planning department has taken the position in response to variance applications very similar to this one that the flag lot ordinance was not intended to affect office or commercial subdivisions and that the creation of new commercial lots and roadways such as the one requested in this petition have sufficient width to accommodate emergency services vehicles. The situation described in this paragraph is unique to Parcel B and is not shared by other property owners in the area or in the city. (See Exhibit 1 and Photos 1, 2 & 6)

- C. Granting the variance to Parcels A and B would not alter the essential character of the area for the following reasons:

Parcel A (See Exhibit 1)

1. The current easement road is used by three businesses already, and there have not been any issues with risk of harm to the public safety. Any splits, or future development of the building sites on Parcels A and B will have the same rights and benefits of the current easement agreement.
2. The variance will simply allow for the continued use of the existing easement road and surrounding properties in the way they have been used and developed since Parcels A and B were purchased this in 1987
3. Within the last four years, the local Fire Department visited all the businesses on the existing easement road with their ladder trucks to verify accessibility. They found no issues.
4. All buildings that are on the existing easement road are identified on Capital Ave SW. Furthermore, any new buildings can be added to existing signage on Capital Ave SW.

5. Underground hookups to utilities have been run under the existing easement roadway to support future development of building sits on Parcels A and B.

Parcel B (See Exhibit 1)

1. The current easement road, located on Parcel B (See Exhibit 1), is used by the business located at 3494 Capital Ave., S.W. and there have not been any issues with risk of harm to the public safety
 2. The variance will simply allow for the continued use of the existing easement road and surrounding properties in the way they have been used and developed since the purchased of the original 11 acres in 1987
 3. Within the last four years, the local Fire Department visited all the businesses on the existing easement road with their ladder trucks to verify accessibility. They found no issues.
 4. All current and future buildings that are on the existing easement road (located in Parcel B) are identified on Capital Ave SW. Furthermore, any new buildings can be added to existing signage on Capital Ave SW. Existing signage clearly directs traffic to the location of the various businesses.
 5. Utility service has been brought underground along the Western boundary of Parcel B to provide utility services for future development.
- d. The problems relating to compliance with the ordinance affecting Parcels A and B were not self created for the following reasons:

Parcel A (See Exhibit 1)

1. The flag-lot ordinance did not exist when I purchased this property in 1987.
2. In 1987 the existing easement road was acceptable to develop more of the property.
3. In 1987 the existing easement was acceptable to split off parcels, which I did.
4. Three additional buildings were built on two different parcels, because the existing easement road was acceptable.

Parcel B (See Exhibit 1)

1. Parcel B was purchased in 1997. As a condition of sale the capability of development of the property was required to be approved and a building permit was to be issued. Following the sale a permit application was submit and approved by the city without any mention of non-compliance with the flag lot ordinance, or any indication that a variance was required in order to develop the property. If such information had been provided the sale would not have occurred, or these issues would have had to been resolved.
2. In 2008 the building and 1 acre of the 5 acres of Parcel B was sold. As a condition of the sale a land division application was required to be approved. the land division application was approved, with an indication that the approval was based on the existence of a variance. Subsequent to that sale in appears that there never was a variance. At the time of the sale there was no indication from the city of non-compliance, or the need for a variance for future development of the remaining 4 acres. If these issues had been raised at the time, they would have had to have been resolved before the sale of just the 1 acre and the building would have been finalized. Otherwise, the sale would have had to include the entire 5 acres.
3. Following the sale of the building and one acre of Parcel B, the new owner submitted an application for a building permit to double the square footage of the existing building. this permit was issued without notice of non-compliance, or the need for a variance. This was a condition of the sale and if notice of non-compliance, the need for a variance these issues could have been addressed at the time of the sale.

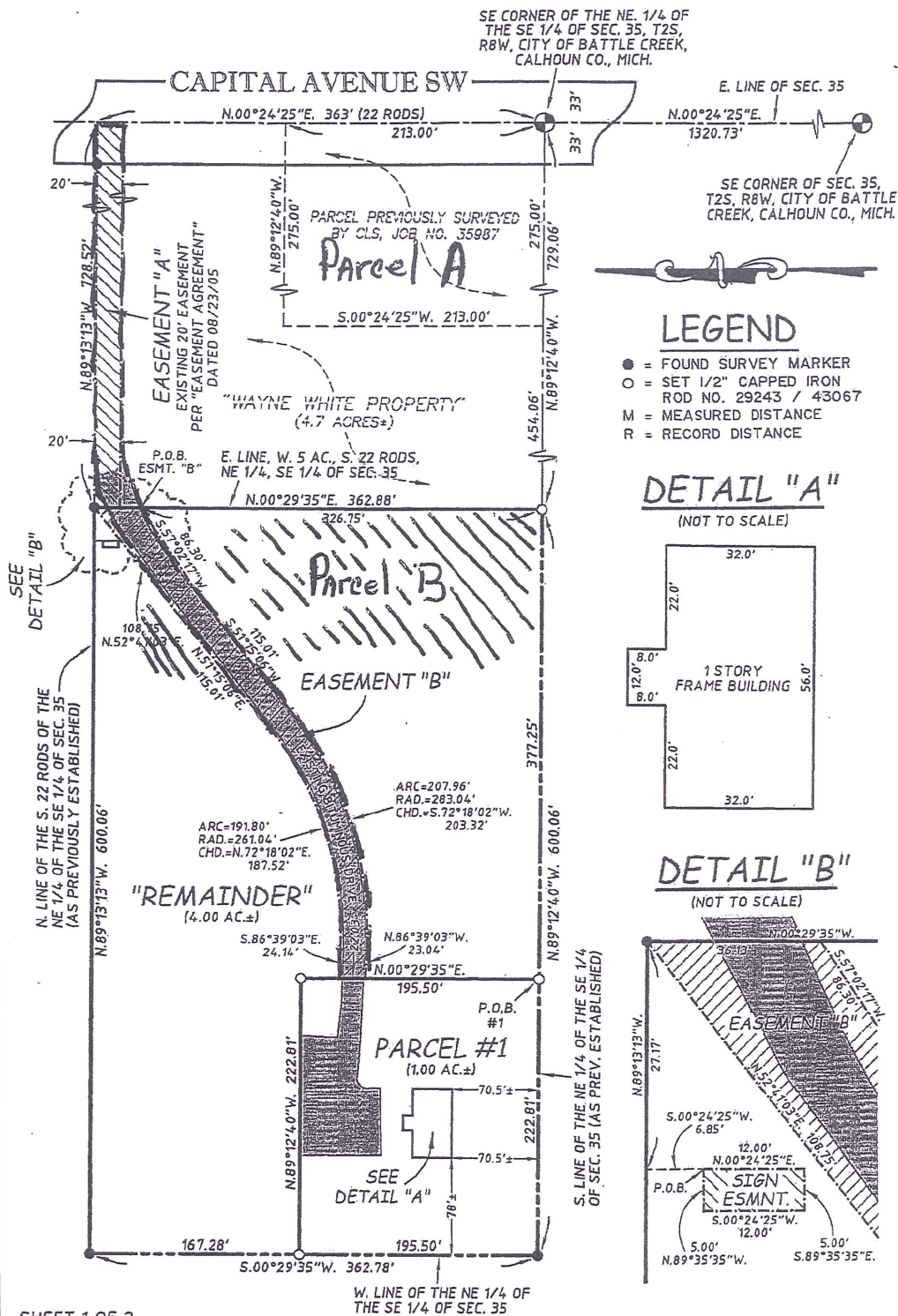
Further support for the granting of this variance:

1. In 1993 the flag lot ordinance was enacted. According to the city, the ordinance was specifically intended to discourage the splitting of lots along extremely deep parcels and having essentially a "second tier" of homes built behind homes fronting on a street. The primary concern with this type of development is that of situations where public safety vehicles might not be able to find a home behind a home.

The flag lot ordinance has a very specific intent-to apply to the construction of a "second tier" of homes. The planning department has taken the position in response to variance applications very similar to this one that the flag lot ordinance was not intended to affect office or commercial subdivisions and that the creation of new commercial lots and roadways such as the one requested in this petition have sufficient width to accommodate emergency services vehicles. In 2002 there was a grass fire at 3494 Capital Avenue S.W., Parcel B (See Exhibit 1) which potentially threatened the building located on that property. This

building is at the very westerly end of the subject properties of this petition. Fire trucks and emergency services vehicles had no difficulty gaining access to the property and appropriately responding to the fire. (See Exhibit 1 for the location of the building on the property). The current roadway has no sharp turns, is easily accessible to emergency vehicles and provides an area for emergency vehicles to turn around and exit the property. (See Exhibit 1)

SKETCH OF SURVEY

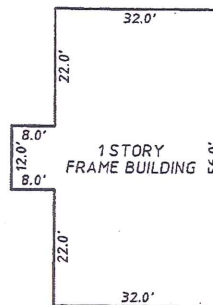


LEGEND

- = FOUND SURVEY MARKER
- = SET 1/2" CAPPED IRON ROD NO. 29243 / 43067
- M = MEASURED DISTANCE
- R = RECORD DISTANCE

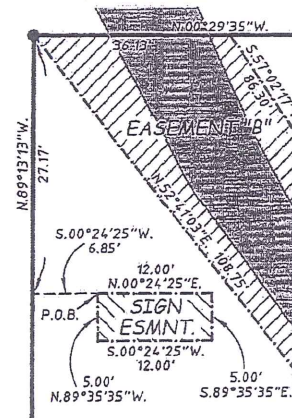
DETAIL "A"

(NOT TO SCALE)



DETAIL "B"

(NOT TO SCALE)



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Photo #1

Top of Drive Facing East - Parcel B



Photo #2

Bottom of Hill on Drive Facing East - Parcel B



Photo #3

Start of Joint Driveway Easement Facing East



Photo #4

Midway Joint Driveway Easement facing East



Photo #5

Ingress & Egress Joint Driveway Easement
on Capital Avenue



Photo # 6

Emergency Vehicles on Easement Road -
Parcel B



Photo #7

Curbing, mature trees landscaping
along easement road-parcel A



Photo # 8

Established building along south border of
easement road - Parcel A



Photo # 9
Established landscaping along easement
road - Parcel A.



Photo # 10

Established landscaping looking toward
easement road - Parcel A.



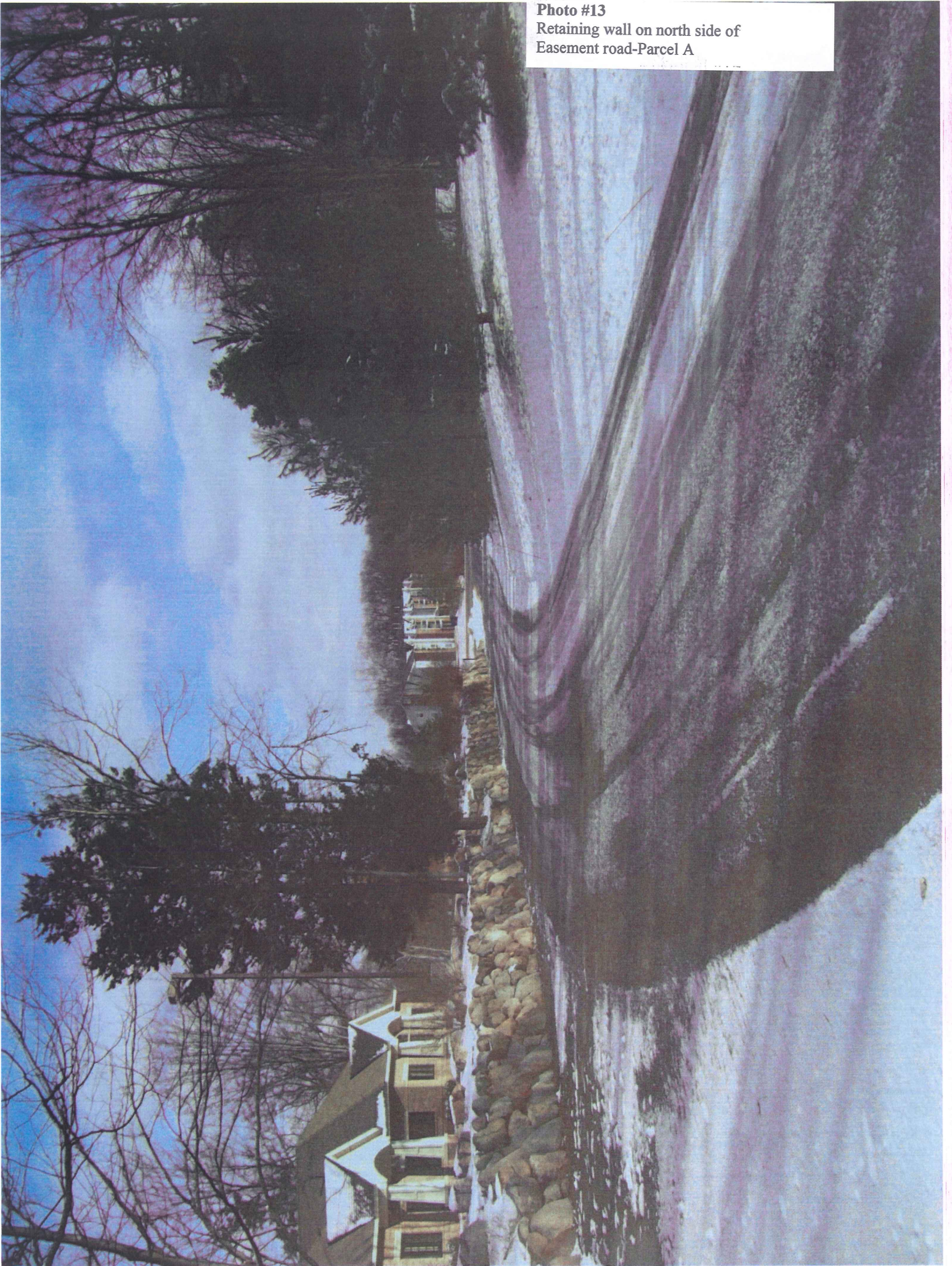
Photo #11
Landscaping along easement
road-Parcel A



Photo #12
Mature trees along easement
Road-Parcel A



Photo #13
Retaining wall on north side of
Easement road-Parcel A



CITY OF



B A T T L E C R E E K
FIRE PREVENTION DIVISION

December 15, 2011

To; Wayne White / White's Design Studio

From; Fire Inspector Ralph Britton

Re; Variance for 3508 Capital Avenue S.W.

To Whom It May Concern:

I, Fire Inspector Ralph Britton, met with Wayne White from White's Design Studio to discuss his request for a variance for the property located at 3508 Capital Avenue S.W. on December 13, 2011.

After talking to Mr. White and looking at the property I, the Authority Having Jurisdiction, see no problem with his request.

The access drive and parking area meet our needs for access to the aforementioned property.

It is the recommendation of the Fire Department to grant Mr. Whites request.

Respectfully,

Fire Inspector Ralph Britton
Battle Creek Fire Department